

Assembly Bill No. 999

Passed the Assembly September 10, 2013

Chief Clerk of the Assembly

Passed the Senate September 9, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 10.9 (commencing with Section 6500) to Title 7 of Part 3 of the Penal Code, relating to prison inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 999, Bonta. Prisoner Protections for Family and Community Health Act.

Under existing law, the Secretary of the Department of Corrections and Rehabilitation is responsible for the administration of the state prisons. Existing law makes it a crime to engage in sodomy while incarcerated in a state prison and existing regulation prohibits inmates from participating in illegal sexual acts.

This bill would require the department to develop a 5-year plan to extend the availability of condoms in all California prisons. The bill would require, commencing January 1, 2015, and contingent upon the receipt of donations by the department, that no less than 5 prisons be incorporated into the program each year, and would require a comprehensive plan to include every prison in the state by the final year. The bill would require all nonadministrative costs of the program, including the dispensers and condoms, to be paid for through donations. The bill would allow the department to decline to implement the program at a prison after specifying the reason in an addendum to the comprehensive plan if the department demonstrates that implementation of the program at a particular prison would be unsafe. The bill would make related findings and declarations.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Prisoner Protections for Family and Community Health Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) Assembly Bill 1334 of the 2007–08 Regular Session would have required the Department of Corrections and Rehabilitation to allow nonprofits and health agencies to enter department institutions to provide sexual barrier protection devices, including condoms, to state prisoners.

(b) In his October 14, 2007, veto message for Assembly Bill 1334, Governor Arnold Schwarzenegger noted that, although it is illegal to engage in sexual activity while incarcerated, providing access to condoms is “consistent with the need to improve our prison healthcare system and overall public health.”

(c) The veto message directed the department to determine the risk and viability of such a program by identifying one state prison facility for the purpose of allowing nonprofits and health agencies to distribute sexual barrier devices.

(d) To accomplish the Governor’s directive, a pilot program was implemented in Solano State Prison, Facility II, for one year, from November 5, 2008, through November 4, 2009. Several agencies covered all costs for the program and volunteered their staff time and expertise.

(e) The Center for Health Justice, a nonprofit organization, purchased the condom dispensing machines and condoms, monitored and refilled the dispensers throughout the pilot period, and provided education for staff and inmates.

(f) Researchers from the Division of Correctional Health Care Services, Public Health Unit, and the State Department of Public Health, Office of AIDS, and the Sexually Transmitted Diseases Control Branch, provided evaluation services and finalized their conclusions in a September 2011 report entitled: Evaluation of a Prisoner Condom Access Pilot Program Conducted in One California State Prison Facility.

(g) The report concluded that there was no evidence that the availability of condoms created an increased risk of breaches of safety or security, or resulted in injury to staff or inmates, in a general population prison facility setting.

(h) The report also stated that its findings may not be generalized with regard to other settings, for example, because of higher security or in a setting dedicated to inmates with mental health problems. Additional pilot studies may be warranted in these other settings.

(i) The report concluded that providing condoms from dispensing machines similar to those used in the pilot program is feasible and of relatively low cost to implement and maintain.

(j) Estimates of the in-prison HIV and STD transmission rates are not available. However, given the relatively low cost of providing condoms relative to the cost of treating HIV, and that

very few HIV infections would need to be prevented to cover the costs of the program, it is likely that providing condoms could reduce department medical costs.

SEC. 3. Chapter 10.9 (commencing with Section 6500) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 10.9. PRISONER PROTECTIONS FOR FAMILY AND
COMMUNITY HEALTH ACT

6500. (a) Based on the recommendations contained in the “Evaluation of a Prisoner Condom Access Pilot Program Conducted in One California State Prison Facility” report, and in light of the successful pilot project conducted at California State Prison, Solano, the Department of Corrections and Rehabilitation shall develop a five-year plan to expand the availability of condoms in all California prisons.

(b) Commencing January 1, 2015, no less than five prisons, as determined by the department, shall be incorporated into the program each year, with the final year yielding a comprehensive plan that includes every prison in the state.

(c) In developing the plan, the department shall consider all of the following recommendations that were made in the report:

(1) Initiate and incrementally expand a program to provide inmates with access to condoms while continuing to monitor the safety and acceptability of the program.

(2) Consider additional pilot studies in settings that may pose a serious health or safety risk, for example, higher security facilities or housing for inmates with serious mental health problems.

(3) Mount dispensers in discreet locations to provide confidential access and increase accessibility by minimizing inoperability due to vandalism. Dispensers with solid steel construction and protected locks are available that are more tamper resistant than those used in the pilot study.

(4) Consider making condoms available confidentially upon request during a medical or mental health visit, in addition to dispensing machines.

(5) Provide information to staff and inmates describing findings from the current study demonstrating that safety and security were not impacted by the distribution of condoms.

(6) Include inmate peer educators, inmates' men's and women's advisory counsels, and medical, public health, and custody staff in local institutional condom program planning and implementation.

(d) (1) The implementation of this program is contingent upon sufficient donations being made to the department. All nonadministrative costs of the program, including the dispensers and condoms, shall be paid for through donations.

(2) If the department demonstrates that implementation of the program at a particular prison would be unsafe for a reason that is unique to that prison, the department may decline to implement the program at that prison after specifying the reason in an addendum to the comprehensive plan prepared pursuant to subdivision (b) that explains why the reason overcomes the findings contained in the "Evaluation of a Prisoner Condom Access Pilot Program Conducted in One California State Prison Facility" report.

Approved _____, 2013

Governor